

MID-CONTINENT COAL & COKE CO.

IBLA 83-474

Decided September 25, 1984

Appeal from decision of Colorado State Office, Bureau of Land Management, imposing certain readjusted terms and conditions in coal lease C-09004.

Affirmed.

1. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the lands.

2. Coal Leases and Permits: Leases Regulations: Generally

The mere fact that a readjusted coal lease expressly provides that regulations adopted subsequent thereto may be applied does not, ipso facto, make the provisions of the lease fatally indefinite, since it is further provided that express provisions of the lease are not subject to alteration by later regulatory amendments. The applicability to the lease of any specific regulatory provision, however, can only be determined where such regulations have been promulgated and a lessee can show injury in fact in their application.

3. Coal Leases and Permits: Leases

Where a coal lessee has been timely informed that BLM intends to readjust his lease upon the running of its initial term and has been provided with a copy of the terms which the Government seeks to impose on the lease, the timely filing of a protest prevents the proposed terms from becoming final until BLM has ruled on the protest. BLM may, in ruling on the protest, alter or amend provisions not being protested so long as BLM can provide a reasonable basis in fact for its actions.

4. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1982) if needed.

5. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1982), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

6. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, since any other authorized use would be subject to the lease.

7. Coal Leases and Permits: Leases -- Rules of Practice: Appeals: Timely Filing

Where a coal lessee is informed that his lease is being amended to add additional land thereto, and is expressly advised that the additional land will be considered to have been included in the lease as of the date of issuance of the original lease, a lessee who objects to this must file an appeal within 30 days after being notified or is thereafter barred from litigating the propriety of the amendment within the Department.

APPEARANCES: Robert Delaney, Esq., Glenwood Springs, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Mid-Continent Coal & Coke Company (Mid-Continent) appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated February 17, 1983, overruling, in part, Mid-Continent's objections to proposed terms and conditions of coal lease C-09004 and readjusting the terms of that lease effective July 1, 1981.

Mid-Continent was the successful high bidder for unit No. 6 at a competitive coal lease sale held on July 8, 1955, embracing both surveyed and unsurveyed lands in T. 10 S., Rs. 89 and 90 W., sixth principal meridian. The notice of lease offer particularly stated that a lease could not issue

for the unsurveyed tracts until a survey had been completed. Lease issuance was, in any event, delayed by the adjudication of a protest lodged by Lucille Mines, Inc., which had filed a noncompetitive coal permit application embracing some of the lands in unit No. 6. In Lucille Mines, Inc., A-27558 (June 6, 1958), the Deputy Solicitor affirmed denial of the protest.

Upon the denial of the appeal filed by Lucille Mines, the Colorado Land Office requested that a survey of the unsurveyed lands in T. 10 S., R. 90 W., be made. Various lands in this township were then surveyed, but, due to the press of other obligations, action to survey secs. 1 and 12, T. 10 S., R. 90 W., was suspended. On February 16, 1961, the Colorado Land Office informed appellant of its intention to issue the lease for the surveyed acreage (1,529.19) while awaiting further action to survey the land in secs. 1 and 12. On February 21, 1961, appellant stated that "we should like to proceed with the lease on the surveyed land amounting to 1529.19 acres as described in your letter." Accordingly, coal lease C-09004 issued for that acreage on April 12, 1961, with an effective date of May 1, 1961.

There the matter lay until November 1972 when appellant inquired as to the status of the land which had not been included in the original lease. In the interim between 1961 and 1972, a protracted survey of secs. 1 and 12 had been completed and the Associate State Director, BLM, sought approval of the Director, BLM, for the amendment of lease C-09004 on the basis of this protraction. It can be surmised that approval was not forthcoming as the next relevant document in the record is a memorandum dated April 14, 1975, from the Chief, Division of Technical Services, to the Chief, Division of Cadastral Survey, reminding him of the longstanding nature of the problem and inquiring as to the status of the survey. Thus bestirred, a survey of secs. 1 and 12 was finally accomplished. On May 30, 1980, the survey returns were officially filed in the Colorado State Office.

By decision of June 2, 1980, the Colorado State Office requested the tender of the unpaid bonus bid for the acreage involved as a precondition to amending the base lease to include the newly surveyed acreage. On June 12, 1980, these monies were tendered by appellant. On June 18, 1980, the United States amended lease C-09004 to include the acreage sought in secs. 1 and 12, T. 10 S., R. 90 W., sixth principal meridian. This amendment specifically provided that "the stipulations, conditions, terms and provisions of coal lease C-09004 apply to the lands described above as if such lands had been included in Section 1 of the original lease, as of the date of its issuance."

By notice dated August 18, 1980, BLM notified Mid-Continent that lease C-09004 was subject to readjustment. On April 2, 1981, BLM transmitted the proposed readjustment of the lease to appellant, whereupon appellant timely filed objections to certain of the proposed readjustment terms. BLM's February 17, 1983, decision sustained certain objections and overruled others. Mid-Continent then timely sought review by this Board alleging various errors. The issues presented by appellant on appeal are similar in most respects to those presented in Mid-Continent Coal & Coke Co., 78 IBLA 178 (1984). Accordingly, our analysis will track, to a certain extent, our prior discussion.

At the time the lease was issued, section 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1958), provided:

Leases shall be for indeterminate periods upon condition \* \* \* that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods.

Section 7 of the Mineral Leasing Act of 1920 was amended by section 6 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. § 207(a) (1982), to read in pertinent part as follows: "Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended."

[1] Consistent with the readjustment authority reserved to the United States by statute, the Department may promulgate regulations prescribing new terms and conditions to be included in coal leases upon readjustment. A decision by BLM to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation or where such provisions are in accordance with the proper administration of the public lands. Mid-Continent Coal & Coke Co., *supra*; Mid-Continent Coal & Coke Co., 76 IBLA 312 (1983); Gulf Oil Corp., 73 IBLA 328 (1983); Coastal States Energy Co., 70 IBLA 386 (1983). 1/

[2] Appellant's first point, while primarily focused on sections 3 and 11 of the readjusted lease terms relating to diligent development and logical mining units (LMU's), is actually somewhat broader in scope than these specific provisions. Appellant notes that both of these sections refer to definitions said to be contained in various titles of the Code of Federal Regulations. These definitions and provisions, appellant continues, have already been amended since the effective date of the lease readjustment. Appellant argues that it is impossible to ascertain whether the applicable provisions are those in effect at the effective date of readjustment, those in effect when BLM issued its decision on appellant's objections, or whether, pursuant to section 1 of the readjusted terms, appellant's lease is subject to regulations "which are new in force or (except as expressly limited herein) hereafter in force." Appellant, thus, suggests that:

The fair inference is that the coal lease readjustment document from which this appeal is taken has no fixed or ascertainable standard from which an operator can establish his rights and duties. Instead of following the statutory mandate of readjustment of terms at the end of the primary term, and at specified intervals thereafter, we have the situation of the Secretary readjusting the terms at the end of the primary term and continuously thereafter. Clearly this is at variance with the Mineral Leasing Act of February 25, 1920 as amended, with the Federal Coal Leasing Amendments Act of 1976 as amended and with the requirements of 43 CFR 3451.2 requiring that "The authorized officer shall, within the time specified in the Notice that the

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1/ Appeal pending, Coastal States Energy Co. v. Watt, No. C83-0730J (D. Utah filed June 1, 1983).

lease shall be readjusted, notify the lessee of the proposed readjusted terms."

In Lone Star Steel Co., 77 IBLA 96 (1983), we discussed a similar contention that section 1 of the standard readjusted lease terms required a lessee "to agree in advance to presently unknown terms embodied in future regulations." Id. The Board discussed two independent points in relation to this argument. First, the Board noted that the complaint was largely conjectural and hypothetical since injury to a lessee would be dependent upon the possibility that a regulatory change might be effected which would adversely affect a lessee who had relied on prior regulatory language. Second, by way of dicta, the Board expounded on the reason that the language in section 1 existed:

[T]here are many forms of new, revised or amended regulations which might legitimately be applied to appellant's lease during the future, some which conceivably could work to the lessee's advantage, or at least not adversely affect it. Regulations can define terms, designate forms, or establish procedures. Other regulations may be necessary to implement new legislation concerning environmental protection, national emergency measures, or matters of health or safety, which could be made obligatory on the lessee in any event. Thus, the language of section 1 is not per se unlawful. Further, when new or revised regulations are promulgated, the Department must adhere to administrative procedures found in 5 U.S.C. § 553 (1976), which afford interested parties the opportunity to become involved in the rulemaking process. If such regulations are applied to the lease and appellant feels that its rights have been adversely affected, it may then have a right to appeal to this Board for relief.

Id. at 97-98. The Board also expressly noted that "there is a statutory restraint against the readjustment of the basic lease terms except at the intervals specified." Id. at 98 n.2, citing Rosebud Coal Sales Co. v. Andrus, 644 F.2d 849 (10th Cir. 1982). Indeed, the lease terms themselves point out that the application of new regulations is expressly limited by the specific terms of the readjusted lease.

The regulatory changes to which appellant has adverted are, precisely as suggested by our analysis in Lone Star Steel Co., supra, definitional and procedural in nature. In particular, through a complicated chain of events, the definitions of diligent drilling and LMU's have been finalized, now appearing at 43 CFR 3480.0-5(a)(3) and (19). 2/ Appellant has not, however,

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2/ Admittedly, the ontogeny of these definitions did lend itself to some confusion. Thus, they were first promulgated as proposed amendments to 10 CFR Part 378. See 46 FR 62226 (Dec. 22, 1981). They were adopted, however, as a final rule at 30 CFR 211(a)(13) and (14). See 47 FR 33154 (July 30, 1982). But, almost contemporaneous to the adoption of these provisions, the responsibilities for administration of coal exploration and development were transferred from the Minerals Management Service to BLM. In recognition thereof, the provisions were redesignated as Part 3480 of Title 43, where they presently can be found.

attempted to show how the specific definitions now in force or the procedures adopted to implement the applicable statutory provisions have adversely affected it in any way. The extent to which future amendments of regulations might alter substantive provisions of the renegotiated lease is inherently speculative and problematic. Suffice it to say, should such an eventuality occur appellant may, at that time, seek review of the applicability of any changes to its outstanding lease. In the present context, appellant's concerns are purely conjectural and must be rejected.

[3] Mid-Continent objects to section 4 of the coal lease readjustment which establishes a lease bond in the amount of \$50,000. Appellant argues that the April 2, 1981, final notice of readjustment set the bond at \$5,000. Appellant objected to that on the grounds that this raised the bond over the previously approved and accepted bond amount. <sup>3/</sup> Appellant contends that, in ruling on its objection, the State Office purported to raise the bonding requirement to \$50,000. Appellant argues that "[h]aving made the decision to set the bond at \$5,000.00 in 1979, [<sup>4/</sup>] and there being no relevant intervening changes, objection is made to raising the bond to \$50,000.00 on February 17, 1983."

In this regard, we note that the file copy of the renegotiated lease terms sent to appellant on April 2, 1981, contains the figure "50,000" for the amount of the lease bond. We also, however, note that this figure is superimposed over a "white-out." Thus, it is possible that the amount of \$5,000, as appellant contends, originally appeared on the document and may well have been contained in the copy transmitted to Mid-Continent. But, the record also establishes that if \$5,000 did appear as the necessary amount of bonding, this was a typographical error. A memorandum from the Director, Geological Survey, to the Colorado State Director, BLM, clearly recommended a bond in the amount of \$50,000.

We need not resolve this possible discrepancy concerning the terms which were originally proposed. Even were we to assume that BLM inadvertently informed appellant in its April 2, 1981, notice that a bond of \$5,000 would be required, BLM was not forestalled from correcting this error in its decision on appellant's protest. By protesting the readjusted lease terms, appellant prevented any of the provisions from becoming final. Thus, BLM would not be barred in the course of adjudicating the protest from correcting

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<sup>3/</sup> Appellant had provided general statewide bonds in the amount of \$25,000 covering all of its leases and permits in Colorado. In the decision overruling appellant's objection, the State Office noted that the regulation authorizing statewide bonds had been deleted in 1979 and that the regulations now expressly required a "separate lease bond for each lease in the amount determined by the authorized officer to be proper and necessary" citing 43 CFR 3474.3.

<sup>4/</sup> The reference to 1979 relates to the fact that, effective with the promulgation of 43 CFR 3474.3, on July 19, 1979, lessees were required to submit separate bonds for each lease (see note 3, supra). Apparently, though the record before the Board does not establish this fact, a bond of \$5,000 was required for this lease. We would note, however, that the bond originally required in 1961, prior to lease issuance, was in the amount of \$10,000.

any manifest errors in the lease provisions whether or not they were raised by the protestant. Moreover, both renegotiated lease forms sent to appellant expressly noted that "an increase in the amount of the lease bond may be required by the lessor at any time during the life of the lease to reflect changed conditions." See section 4 of the Coal Lease Readjustment. A typographical error would be sufficient to justify an increase in the bond required even had appellant accepted the original terms of the lease without protest.

Ultimately, of course, the real question to be decided is whether \$50,000 is too high a bond to be required. Considering the fact that this is a producing lease we cannot say that requiring a bond in the amount of \$50,000 is erroneous on its face. 5/ For its part, appellant has provided no evidence that the bond is, in fact, excessive. Thus, we have no choice but to affirm the bonding requirement in the amount of \$50,000.

Mid-Continent next objects to section 5 which imposes a rental of \$3 per acre and provides that rental may not be credited against royalties. Appellant notes that section 2(b) of the original lease terms imposed rental of \$1 per acre and allowed rentals to be credited against royalties. Appellant contends that while section 3(d) of the original lease reserved the right

reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year-period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period,

the right was not reserved to make these changes with respect to rental during the "continuance of the lease," which "continuance" extends into successive periods of the lease following readjustment. Further, appellant asserts that the right was not reserved to deny the application of rental against royalties.

Section 5, concerning the rental term, is specifically mandated by 43 CFR 3473.3-1(a), which provides that "[t]he annual rental per acre or fraction thereof on any lease issued or readjusted after the promulgation of this subpart shall not be less than \$3. The amount of the rental will be specified in the lease." Section 5 of the readjusted lease provides for a rental of \$3 per acre or fraction thereof. BLM properly imposed the new rental to comport with the regulatory requirement.

BLM correctly stated in its decision that there is no longer authority for allowing rentals to be credited against royalties since the FCLAA deleted the applicable authorization from the former section 7 of the Mineral Leasing Act of 1920 (cf. 30 U.S.C. § 207(a) (1982) with 30 U.S.C. § 207 (1958, 1970)). Thus, 43 CFR 3473.3-1(d) now provides: "Rentals due and payable for any lease

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5/ The difference between the bonding amount sought in this case (\$50,000) and that involved in appellant's two prior appeals (\$5,000) is directly occasioned by the fact that the instant lease is a producing lease whereas the other leases were not.

year commencing on or after the effective date of the readjustment shall not be credited against royalties.

[4] Mid-Continent also objects to section 6 of the readjusted lease, contending that the production royalty rate on the Federal coal to be extracted from this lease should be established at 5 percent rather than 8 percent because of the high costs of recovering the coal, taking into account the cover, faulting, distance for the portals, elevation, and other conditions. In Blackhawk Coal Co., 68 IBLA 96, 99 (1982), the Board responded to similar arguments:

Departmental regulation 43 CFR 3473.3-2 provides two ways of granting underground coal lessees relief from the statutory 12-1/2 percent royalty. Subsections (a)(1) and (a)(3) implement 30 U.S.C. § 207(a) (1976) and provide that a rate as low as 5 percent may be determined at lease issuance. Alternatively, the Department may establish a royalty rate in the lease and provide relief after lease issuance upon application of the lessee under subsection (d), which implements 30 U.S.C. § 209 (1976). Appellant has not persuaded us that it is unreasonable to establish an 8 percent royalty rate in the lease now, since the rate may temporarily be reduced later if conditions warrant. If a lower rate is put into the lease now and economic conditions change favorably during the term of the lease, there will be no opportunity for upward adjustment of the royalty figure until the lease is again ripe for readjustment. The method chosen by BLM thus assures the United States a fairer return over the life of lease, provides appellant some relief from the statutory 12-1/2 percent rate, yet affords appellant an opportunity for further royalty relief when it is really needed. We previously have affirmed BLM decisions denying special royalty relief at lease readjustment, requiring lessees to seek such relief under 43 CFR 3473.3-2(d). Lone Star Steel Co., 65 IBLA 147 (1982); Garland Coal and Mining Co., 49 IBLA 400 (1980).

See also FMC Corp., 74 IBLA 389 (1983); Coastal States Energy Co., *supra* at 393.

We are aware of the recent decision issued by United States District Court for Wyoming styled FMC Wyoming Corp. v. Watt, C 83-347-K (June 28, 1984). In that decision, the Court held that, with reference to surface mining operations, the Department could not apply the statutory mandated rate of 12-1/2 percent to all leases subject to readjustment, but rather the applicable royalty rate must be individually tailored to each lease.

In contradistinction to the FMC situation, appellant herein is only concerned with the royalty rate for underground mining methods. In point of fact, rather than set the rate at the maximum 12-1/2 percent authorized by law, the Department set the royalty rate for coal mined through underground means at 8 percent. Consistent with the rationale delineated in Blackhawk Coal Co., *supra*, we believe that this approach represents a fair and flexible compromise of the competing interests of the Department, as the royalty receiver, and appellant, as remitter of the royalties. To the extent that a



lessee feels that greater royalty reduction can be justified, application may be made pursuant to 43 CFR 3473.3-2(d).

Thus, we do not find anything in the instant decision contrary to the Court's holding in FMC Wyoming Corp. v. Watt, *supra*. Even were this not the case, however, we note that an appeal has been taken by the Department to the Tenth Circuit Court of Appeals. In such circumstances, we would not apply the District Court's holdings outside of the District of Wyoming, even if we deemed the Court's analysis to require a contrary result herein. See Gretchen Capital, Ltd., 37 IBLA 392 (1978).

Mid-Continent objects to section 10 of the readjusted coal lease requiring submission of a mining and reclamation plan "not more than 3 years after the effective date of this readjustment." Appellant requests that this requirement be revised so that it is allowed 3 years after the determination of the appeal in which to comply. As we have noted, however, this provision is mandated by statute (30 U.S.C. § 207(c) (1982)) and thus, appellant was well aware of its requirements without express notification by BLM once it was informed in August 1980 that a readjustment was to occur. Compare Pitkin Iron Corp., 81 IBLA 81 (1984), where no notice of readjustment was timely provided. Appellant has no valid grounds for complaint.

[5] Appellant notes that section 24 of the readjusted lease provides for readjustment of terms and conditions "on the 10th year after the effective date hereof and on each 10th year thereafter." Appellant points out that section 3(d) of its original lease provided a reservation of

[t]he right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period.

Appellant asserts that while the FCLAA requires readjustment at 10-year intervals after the first 20 years, there is no such requirement as to readjustments of existing leases. Appellant also asserts that the phrase "otherwise provided by law" refers to the readjustment of royalties and other conditions, not the readjustment period.

The Board responded to similar contentions in Gulf Oil Corp., 73 IBLA 328, 332 (1983), stating:

Although lease readjustment is discretionary, if the Secretary readjusts a lease, he must impose certain lease terms and conditions on all pre-FCLAA leases at the time of their readjustment to conform to the provisions of FCLAA. One of these mandatory provisions is the periods at which readjustment may be undertaken. The FCLAA provides, 30 U.S.C. § 207(a) (1976), that each lease shall be issued for a primary term of 20 years and shall be subject to readjustment every 10 years thereafter so long as production continues. Coastal States Energy Co., *supra* at 394.

We note that the phrase "unless otherwise provided by law" in former section 7 gave the Secretary discretion to readjust lease terms as he deemed proper, unless at the expiration of the 20-year period the law specifically directed that a term be included in the lease. If at the end of the 20-year period the law directed that a lease contain a new provision, section 7 compelled the Secretary to conform the lease to the new provision upon readjustment. The Solicitor has noted:

Given the strong expressions in the legislative history of the FCLAA of Congress's desire to exact a fair return and ensure that leases are developed and not held for speculative purposes, it is not likely that Congress intended to free the Secretary from any statutory restraints in readjusting pre-FCLAA leases. Since former section 7 no longer exists to govern the exercise of the Secretary's readjustment authority, the only alternative is that the Act as amended by the FCLAA controls. [Emphasis added.]

Solicitor's Opinion, M-36939, supra at 1009. It follows that the readjusted leases properly provide for further readjustment at the end of 10 years.

[6] The readjustment requirements imposed under section 15 are not directly addressed by statute or regulation. Readjustment of lease terms and conditions, however, is not limited to specific legal requirements. As stated by the court in Rosebud Sales Co. v. Andrus, supra at 951, "The scope or nature of the changes [readjustment] is not limited and there thus exists a very broad power to make changes considered to be in accordance with the proper administration of the lands." Appellant objects to section 15 of the readjusted coal lease "Authorization of other Uses and Disposition of Leased Lands," which reserves the right "to authorize other uses of the leased lands by regulation or by issuing, in addition to this lease, leases, licenses, permits, easements or rights-of-way, including leases for the development of minerals other than coal under the act." Appellant explains that this section revises its original lease and contends that the revision constitutes a substantial enlargement of reserved access or use. Appellant asserts that the Government reserves the right to reduce or impair the lessee's utilization of the leased land by regulations hereinafter imposed that may reduce or take away rights conferred by contract at the time of the original lease issuance and at the time of readjustment.

As far as contractual rights are concerned, the lessee of a pre-FCLAA lease has no vested rights to the indefinite continuation of existing lease terms, since all the terms and conditions were prescribed subject to periodic readjustment. FMC Corp., supra at 393. Solicitor's Opinion, M-36939, 88 I.D. 1003, 1008 (1981). However, appellant does have certain rights in relation to other users of the lands covered by its lease. We find that appellant's objection to section 15 of the readjusted terms unpersuasive, since any secondary uses authorized pursuant thereto would be subject to the lessee's paramount rights. Gulf Oil Corp., supra at 334; Blackhawk Coal Co., supra.

[7] The last issue which must be dealt with relates to the June 18, 1980, amendment of lease C-09004 to include lands in secs. 1 and 12, T. 10 S., R. 90 W., sixth principal meridian. Appellant argues:

As pointed out above, in the case of Lease C-09004, while the lease was awarded to Mid-Continent pursuant to the auction of 1955, issuance of the lease as to 975 acres was deferred until June 1, 1980, when it was amended with the statement that "This amendment to Coal Lease C-09004 takes effect June 1, 1980" with the further provision that "the stipulations, conditions, terms and provisions of Coal Lease C-09004 apply to lands described above as if such lands had been included in Section 1 of the original lease, as of the date of its issuance."

Despite the fact that the amendment was to take effect as of June 1, 1980, the BLM on August 18, 1980 gave notice that "The above identified coal lease was issued effective May 1, 1961, and the terms and conditions of the above identified coal lease become subject to readjustment on May 1, 1981." Thus, instead of having 20 years within which to develop the lease under the terms under which it issued, the period was attempted to be shortened to less than one year.

(Statement of Reasons at 8).

In this regard it is too late for appellant to challenge the effective date of the amendment of this coal lease. As appellant itself recognizes, the amendment expressly provided that the lands covered thereby would be subject to the terms of the original lease "as if such lands had been included in Section 1 of the original lease, as of the date of its issuance." (Emphasis supplied.) The clear import, indeed, the only possible interpretation of this language, is that all lands would have been considered to have been leased as of May 1, 1961. If appellant objected to this, it was its obligation to voice an objection when it received notification of the amendment. It did not so object, but rather accepted the amendment of the lease. It is now forestalled from litigating this matter in the context of the readjustment of the original lease. Its contentions, on this point, must be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Gail M. Frazier  
Administrative Judge